91-490

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

ALFRED H. GREENING, JR.,

Petitioner,

vs.

HONORABLE BEN MILLER, Chief Justice, Illinois Supreme Court, et al.,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Did the Illinois Supreme Court adopt a theory of inherent power which denied due process and equal protection of the law by:

(a) depriving a licensed attorney of his right to practice law without providing a hearing?

(b) refusing to provide a forum to challenge the constitutionality of its own actions?

(c) imposing a summary criminal conviction without specific findings of fact on essential elements of the offense?

(d) adopting a unique process to impose selective discipline outside the state's constitutional and statutory law and its own disciplinary procedures?

(e) prohibiting the trier of fact from making a final judgment of guilt or innocence?

PARTIES TO THE PROCEEDINGS BELOW

ALFRED H. GREENING, JR. (Greening), the Petitioner in this action, was the Respondent-Defendant in the proceedings below. The respondents, in this action, the Plaintiffs and relator below, are the Honorable Ben Miller, Chief Justice, and the Honorable William G. Clark, Honorable Thomas J. Moran, Honorable Michael A. Bilandic, Honorable James D. Heiple, Honorable Charles E. Freeman, Honorable Joseph F. Cunningham, Associate Justices of the Supreme Court of Illinois (herein referred to as the **ILLINOIS SUPREME COURT**) and James H. Bandy, John P. Clarke, David M. Hartigan, Watts C. Johnson, Eldridge T. Freeman, Carole R. Nolan and Mary T. Robinson (herein referred to as the **Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC)**), the Illinois Supreme Court's relator.*

* Greening attempted to clarify the parties' status but the Court ruled "I'm going to find that pursuant to the direction of the Supreme Court that I have no authority to determine who the parties are." (Judge Bone tran., 6/21/90, p. 14, l. 22-24)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Illinois Constitution

State Statutes

Illinois Supreme Court Rules

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OPINIONS AND ORDERS BELOW

The opinions and orders sought to be reviewed are:

(a) The order of the Illinois Supreme Court filed May 29, 1991, is unreported and is reprinted in appendix A. The order found Greening guilty of indirect criminal contempt.

(b) The order of the Illinois Supreme Court filed June 25, 1991, is unreported and is reprinted in appendix B. The order reaffirmed Greening's conviction and imposed sentence.

The orders identified above are final.

STATEMENT OF JURISDICTION

This Court has statutory jurisdiction to review final judgments of the Illinois Supreme Court under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves an interpretation and application of the Fourteenth Amendment to the U.S. Constitution which provides in pertinent part:

> * * * nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person the equal protection of the laws * * *

STATEMENT OF THE CASE

Petitioner, ALFRED H. GREENING, JR., (Greening), during his annual registration with the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC) raised an issue concerning revenue raised by Court rule. Rather than address that issue, the Illinois Supreme Court denied a hearing, foreclosed review and invoked summary, punitive action.

Summary Termination of License

On May 11, 1989, the ARDC notified the chief judge of the Seventh Judicial Circuit that "Attached is a list of those individuals [of which Greening was one] in your circuit who * * * have been removed from the Master Roll. [A]ny person whose name is not on the Master Roll and who practices law * * * is engaged in the unauthorized practice of law." (Letter of Jerome Larken to the Honorable John W. Russell, May 11, 1989).

On July 27, 1989, the ARDC instituted an original proceeding in the Illinois Supreme Court (M.R. 5916) to have Greening held in contempt for not paying his registration fee, but that petition was amended to suspend Greening's license instead. On August 7, 1989, the Supreme Court issued an order requiring Greening to show cause why his license to practice law should not be suspended for not paying his registration fee.[1]

On September 11, 1989, in response to the Illinois Supreme Court's order to show cause why his license should not be suspended, Greening raised due process objections and demanded a hearing on the summary termination of his proprietary right to practice law (also referred to in this petition as "*de facto* suspension").[2] At that time, Greening tendered to the Illinois Supreme Court a cashier's check in the total amount of fees and penalties then claimed to

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[1] The ARDC stipulated that "no specific conduct of Respondent was reported to the [Illinois Supreme] Court other than Respondent's failure to pay * * * with his registration." (M.R. 5916, Stipulation as to Facts and Admissability of Documents, Item 15, filed August 3, 1991)

[2] The outright suspension of one's license to practice law and the termination of the benefits of that license are legal equivalents.

be due by the Supreme Court. Contrary to its own rule which provides "* * * upon payment, the attorney shall be immediately and automatically reinstated to practice law". (S.Ct. Rule 756(e), Ill.Rev.Stat.(1989) ch.110A, par.756(e)), the Supreme Court refused to accept Greening's check. (Appendix D)[3]

Following Greening's response to the rule to show cause no hearing was afforded and no order of suspension was issued.[4]

Criminal Contempt Proceedings

On February 13, 1990, while the suspension action was pending, and following Greening's tender of payment to the Court, the ARDC filed a separate petition in M.R. 5916. The ARDC asked that Greening be held in indirect criminal contempt for the unauthorized practice of law after his name had been summarily removed from the Master Roll for failure to pay the registration fee.

On March 26, 1990, the Illinois Supreme Court ordered Greening to show cause why he should not be held in indirect criminal contempt. In his response, Greening again raised objections of denial of due process and equal pro-

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[3] Greening deposited the same check in an escrow in favor of the Illinois Supreme Court.

[4] On October 25, 1989, in an unrelated matter, the Honorable Judge Mills of the United States District Court for the Central District of Illinois, Springfield Division, in cause No. 86-3235, entered an order finding that: "On October 25, 1989, this Court contacted the clerk of the Supreme Court of Illinois to determine the current status of Attorney Greening's case. At present, Attorney Greening is entitled to practice law in Illinois and thus, pursuant to local Rule 1 he may also practice before this Court." (*Kurtz v. Scully*, USDC, C.D. Ill., 86-3235, order of Judge Mills, filed October 26, 1989, pgs. 1-2) (Appendix C)

tection under the United State Constitution and a number of State constitutional and legal issues.[5]

On May 30, 1990, the Illinois Supreme Court ordered "representatives of the ARDC" and Greening to appear before Judge David Bone (a judge who sits in a trial court of original jurisdiction, but who was ordered to sit in a unique capacity):

> " * * * on June 21, 1990, for the purpose of an evidentiary hearing in which *only* findings of fact *shall* be made on issues formed by the administrator's * * * report and the Respondent's answer * * *. The transcript of the proceedings * * * shall be filed with the Clerk of this Court."[6] (emphasis added) (Appendix E)

Thus, the Illinois Supreme Court established a unique bifurcated procedure of criminal prosecution which con-

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[5] On March 19, 1990, Greening filed a complaint with the Federal District Court, Central District of Illinois, Springfield Division, seeking equitable relief and other remedies based on the Illinois Supreme Court's denial of due process and equal protection under the U.S. Constitution. (*Greening v. Moran, et al.*, U.S.D.C. No. 90-3071, C.D.-Ill.(1990)).

[6] On June 5, 1990, Greening applied to the Federal District Court for a preliminary injunction to enjoin the ARDC from interfering with Greening's exercise of his proprietary right to practice law solely because of his failure to pay the registration fee. On June 21, 1990, the Federal District Court dismissed Greening's complaint and concomitantly dismissed his petition for a preliminary injunction. In their brief in opposition to Greening's petition for a temporary injunction filed in the Federal District Court on June 15, 1990, Defendant ARDC stated: "In his complaint, plaintiff argues that he has been deprived of due process due to the lack of a hearing. A hearing date regarding plaintiff's activities as alleged in M.R. 5916 has been set for June 21, 1990. *He will have the opportunity to raise all relevant issues in the state forum.* Now that the hearing date is set, plaintiff asks this court to enjoin the very hearing which will afford him his due process guarantees." (emphasis added)

sisted of four separate appearances before Judge Bone and one appearance before the Justices of the Supreme Court.

Prior to any proceedings, Judge Bone adopted a letter of memorandum affirming among other things: that there are no rules of procedure for the proceedings in M.R. 5916 or for those proceedings to be conducted before him pursuant to the Supreme Court's order; and, that the proceedings before him were not proceedings in his court, but original proceedings before the Supreme Court. (Letter Memorandum, addressed to Judge Bone, dated June 12, 1990, adopted June 15, 1990).

1. Judge Bone proceeding of June 21, 1990

At the first hearing, Judge Bone stated the following:

(a) That he "* * * gives special attention to the word "only" which directs the Court [Bone] to make findings of fact on issues formed." (Bone tran., 6/21/90, p. 3, l. 7-9)

(b) That the charge is indirect criminal contempt and "[t]he emphasis there is on 'criminal.' " (Bone tran., 6/21/90, p. 3, l. 12)

(c) "* * * the burden would be upon the prosecuting authority to prove guilt * * * beyond a reasonable doubt which would be *left for the Supreme Court to determine* with this Court making only findings of fact" (Emphasis added) (Bone tran. 6/21/90, p. 3, l. 21-24; p. 4, l. 1)

(d) "* * * it's *sui generis* in that there is no right to trial by jury, as directed by the Supreme Court. Supreme Court has their own reason for that determination, apparently." (Bone tran., 6/21/90, p. 4, l. 2-4)

(e) "I make these preliminary statements because that is about all I have to guide me, as I'm unaware of any rules that are applicable to these

proceedings and I have had no prior experience in these proceedings." (Bone tran., 6/21/90, p. 4, l. 6-9)

(f) That he was advised by the Chief Judge of his circuit that he construe the assignment narrowly and to do exactly what was directed by the Supreme Court and that if he needed further clarification to contact the Clerk of the Supreme Court. (Bone tran., 6/21/90, p. 5, l. 11-24)

At this first appearance, counsel for Greening questioned the improper use of funds raised by Supreme Court rule. (Bone tran., 6/21/90, p. 7, l. 21); pointed out that payment of Greening's fee was tendered and rejected (Bone tran., 6/21/90, p. 8, l. 12-16); that Greening was not afforded a hearing either before or after the *de facto* suspension of his right to practice law (Bone tran., 6/21/90, p. 8, l. 22-24; p. 9, l. 1-2); and "* * * that we do not believe that any hearing which does not look at all of the elements in this situation can be a hearing which can pass due process under the State and Federal constitutions" (Bone tran., 6/21/90, p. 9, l. 4-8). Greening's counsel also expressed concern that Judge Bone was unduly limited in his authority and that the hearing "* * * was not going to get to the real issues that created this whole situation in the first place." (Bone tran., 6/21/90, p. 9, l. 18-21).

Judge Bone was advised of the ARDC's statement in the Federal court proceedings (see footnote 6). (Bone tran., 6/21/90, p. 9, l. 9-12). The ARDC restated that "* * * the proceeding as a whole would give the Defendant an opportunity to raise all of his issues, both of fact and of law, which we believe the questions of law are better raised and better decided by the Supreme Court * * * who has original jurisdiction * * * and inherent authority to act on the law and the facts in this case." (Bone tran., 6/21/90, p. 10, l. 22-24; p. 11, l. 1-5). The ARDC re-emphasized

its position by stating: "* * * Mr. Greening would have the opportunity to raise all relevant issues in the State forum. He will be. He will raise all issues of law in the Illinois Supreme Court." (Bone tran., 6/21/90, p. 12, l. 1-3).

2. Judge Bone proceeding of August 6, 1990

At the August 6 proceeding, the ARDC presented its case in chief concerning whether Greening engaged in the unauthorized practice of law after his name was removed from the Master Roll.

3. Judge Bone proceeding of September 7, 1990

At the third proceeding Greening motioned Judge Bone to rule that the ARDC had not presented a case sufficient to prove their charge beyond a reasonable doubt. (Bone tran., 9/7/90, p. 4, l. 20-24; p. 5, l. 1-4). In Response to this motion, the Court stated:

(a) "Well, I don't know what the Supreme Court wants the Court [Bone] to consider other than facts. That's the problem." (Bone tran., 9/7/90, p. 5, l. 7-9).

(b) "I think this is a question of law that the Supreme Court must decide. And, pursuant to the direction given to this Court by the Supreme Court, it would be beyond the authority of this Court to so determine. I can determine what facts are and beyond that I don't know that I have any authority." (Bone tran., 9/7/90, p. 5, l. 17-22) See also (Bone tran., 9/7/90, p. 10, l. 8-18) * * * *it's a difficult matter for the Court because I think my trained inclination, my experience, is to allow the motion, but I have this reservation by the direction from the Supreme Court. It is so limited that I believe that I am without discretion to do that which the Respondent would*

> *like the Court to do and which the Court would normally do in this proceeding.*" (Bone tran., 9/7/90, p. 12, l. 19-24; p. 13, l. 1-2). (emphasis added)

The first witness called by Greening was the chief accounting official subpoenaed from the State Comptroller's office to testify as to the issue of payment. (Bone tran., 9/7/90, p. 16, l. 12-13; p. 17, l. 10-11) This testimony also bore on the issue of criminal intent. (Bone tran., 9/7/90, p. 18, l. 4-9). Upon objection of the ARDC, Judge Bone refused to allow this witness to testify (Bone tran., 9/7/90, p. 19, l. 12) and refused to allow a formal offer of proof. (Bone tran., 9/7/90, p. 20, l. 8-9). The Court observed that "the question of payment, *if it's in the case*, is payment as directed by the Supreme Court. And then the Supreme Court can decide the effect, if there's a failure to pay, a consequence of that. It's payment pursuant to rule, is it not, Mr. Moran * * *". (emphasis added) (Bone tran., 9/7/90, p. 19, l. 6-10). The Court noted that "* * * there are questions between the law and the facts which have to be sorted out. The law is obviously for the Supreme Court and the facts are for this Court. I think this Court has to do what Mr. Moran stated. Was there a check paid on a certain date? Those facts need to be found by this Court. What is inferred by that is for the Supreme Court. I don't think the Court should go beyond what I just suggested would be the responsibility of this Court." (Bone tran., 9/7/90, p. 66-68)

Greening inquired whether the Court would make findings of fact with regard to criminal intent. (Bone tran., 9/7/90, p. 68, l. 2-3) The Court responded:

> "I think that [intent] is beyond the direction of the [Supreme] Court * * * the [Bone] Court cannot make determinations * * * of whether or not * * * he did

things in a knowing or voluntary manner * * * for the purpose of practicing law that type of thing * * * that's for the Supreme Court to determine." (Bone tran., 9/7/90, p. 68, l. 16-23) "Rather than me [Judge Bone] talk anymore, Mr. Moran, do you understand what counsel is getting at and what he's asking the Court to rule upon?"

Mr. Moran, the representative from the ARDC, stated:

"In this case, * * * the Supreme Court handed down an order and said Judge Bone you will tell us the story of what went on here, the bare story without making conclusions about what the story means or what the moral of the story is * * *. We believe that the Court * * * can tell the Supreme Court what the circumstances were * * * but we believe that the intent is really a question of law that the Supreme Court can * * * decide when you told them the story of what went on * * *." (Bone tran., 9/7/90, p. 69, l. 13-24; p. 70, l. 1-10)

Judge Bone accepted this direction concluding that:

"I agree with Mr. Moran * * * I need to tell the story to the Supreme Court." (Bone tran., 9/7/90, p. 71, l. 2-19)

4. Judge Bone proceeding of September 21, 1990

The fourth proceeding before Judge Bone dealt with final motions and argument. The defense waived closing argument.

On October 4, 1990, Judge Bone filed his report (dated October 3, 1990) with the Illinois Supreme Court stating only: "[t]he facts with respect to whether Respondent engaged in the unauthorized practice of law * * * were found * * * beyond a reasonable doubt * * *." (Appendix F)

5. Proceedings before Justices

After receiving Judge Bone's report, the Supreme Court established a briefing schedule limiting briefs to "* * * the issue of whether the Respondent [Greening] engaged in the unauthorized practice of law after his name had been removed from the Master Roll [for failure to pay the fee] * * *."[7] (Appendix G) On May 29, 1991, the Court, without a hearing or briefing on either the constitutional issues or the issues of payment or intent, found Greening guilty of indirect criminal contempt.

On June 25, 1991, the Supreme Court conducted a sentencing hearing. Greening renewed his objection that the Court failed to provide a hearing on the constitutional and legal issues; that there was no finding of intent; and, that suspension proceedings were not resolved. The ARDC noted during their statement that Greening raised various constitutional issues and urged the Court to summarily dispose of these matters as being without merit. After reaffirming Greening guilt of criminal contempt, the Court did so:

> "The Court also has considered respondent's other constitutional challenges made throughout the course of these proceedings, and we find them to be without merit." (M.R. 5916, order filed June 25, 1991) (Appendix B, page 2)

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[7] In his brief, Greening specifically stated "Defendant respects the Court's order and has excluded all arguments concerning * * * constitutional challenges to various proceedings and objections to specific procedure. In respecting the Court's exclusion of arguments on these matters, Defendant does not waive his right to contest these issues * * * Defendant renews his constitutional challenges as set forth in his answer filed September 11, 1989, and April 30, 1990 * * *. The Defendant objects that these various issues have never been considered throughout these proceedings."

The Court dismissed Greening's constitutional claims on the grounds that "[i]t is well established that it is exclusively within the prerogative of the Supreme Court to determine who shall be permitted to practice law in Illinois". (M.R. 5916, order filed June 25, 1991) (Appendix B., page 2)

TIMING OF PRESENTATION OF FEDERAL QUESTIONS

Greening formally raised his federal constitutional issues at least six times:

(a) In his amended response (9/22/89) to the order to show cause why his license should not be suspended, Greening stated that the "Supreme Court of Illinois has violated Respondent's due process rights under * * * the Fourteenth Amendment to the United States Constitution * * *".

(b) In his response to the order to show cause why he should not be held in indirect criminal contempt, Greening "* * * reiterates its [sic] constitutional objections previously raised" (M.R. 5916, written response to order of March 26, 1990 * * *, filed April 30, 1990, p. 3, item 11)

(c) On June 21, 1990, in the first of a series of criminal contempt proceedings before Judge Bone, he renewed his request for a hearing on the constitutional issues. (Bone tran., 6/21/90, p. 9, l. 4-8)

(d) On March 7, 1991, in his brief and argument, Greening stated in a section labeled "unresolved matters" that: "Defendant respects the Court's order and has excluded all arguments concerning * * * constitutional challenges * * * [but]

does not waive his right to contest these issues * * * [and] objects that these issues have never been considered * * *." (M.R. 5916, Respondent's brief, p. 2, filed March 7, 1991)

(e) On April 24, 1991, in his Surrebuttal Brief in a section labeled "Reaffirmation of Unresolved Matters", Greening stated: "Defendant renews his constitutional challenges as set forth * * * [and] objects that these various issues have never been considered * * *." (M.R. 5916, Surrebuttal Brief and Argument of Respondent-Defendant, p. 8-9, filed April 24, 1991)

(f) On June 25, 1991, he stated to the Illinois Supreme Court that: "In the course of presenting the fee raising issue, the actions of the Court and its agents, the ARDC, have precipitated a series of constitutional issues all of which have yet to be addressed * * *." (Report of Proceedings, June 25, 1991, p. 4, lines 10-15)

ARGUMENT SUPPORTING PETITION

The Illinois Supreme Court invoked disciplinary proceedings and subjected Greening to a unique set of procedures for which there were no rules. Greening asks the Court to determine whether a state supreme court, under a theory of exclusive, inherent power can suspend due process and equal protection guarantees insured to all citizens against state encroachment under the Fourteenth Amendment.

This case is not a bar admission case, nor an action to enjoin State action or to have Supreme Court rules concerning the disciplining of attorneys declared unconstitu-

tional. This petition does not challenge the authority of the Illinois Supreme Court to regulate the practice of law; register or license attorneys; or to seek review of attorney disciplinary procedure established in Illinois.

Petitioner's research indicates that this is a case of first impression.

(I) DUE PROCESS WAS DENIED IN LICENSE REVOCATION PROCEEDINGS.

(a) NO HEARING WAS PROVIDED ON THE TERMINATION OF GREENING'S LICENSE TO PRACTICE LAW.

Greening was licensed to practice law for forty years without disciplinary action taken against him and had a property right in the continued practice of his profession, which the State could not deny him without due process (*Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1984)). The minimal procedural requirements for the impairment of these rights is a matter of Federal law, and these requirements are not diminished by the fact that the State may have adopted procedures that it deems adequate for adverse official action (*Vitek v. Jones*, 445 U.S. 480 (1980); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982)). Regardless of the fact that State issues are involved, under Federal law Greening's right to practice law was an entitlement which could not be taken away without a prior hearing or a prompt hearing afterwards (*Bell v. Burson*, 402 U.S. 535 (1971); *Berry v. Barchi*, 443 U.S. 55 (1979)). It does not matter how simple the issue or how obvious the facts. The nature of the issues may affect the type of hearing but does dispense with its requirement. " * * * [D]ue process requires that when a State seeks to terminate an interest [in a license] it must afford notice and opportunity for a hearing appro-

priate to the nature of the case *before* the termination becomes effective." (*Bell*, p. 542).

Bell is dispositive. *Bell's* driver's license was suspended under the State's safety and financial responsibility law providing for an automatic suspension if a driver was involved in an accident and did not have insurance. *Bell* maintained that he had no liability because he clearly was not at fault. The State maintained that the statute was simple and no issues other than the fact of "involvement in an accident" and "no insurance" were relevant. In *Bell*, this Court stated:

> "suspension of issued licenses thus involves State action that adjudicates important interests of the licensees. In such cases, the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. This is but an application of the general proposition that relevant constitutional restraints limit State power to terminate an entitlement, whether the entitlement is denominated, a right, or a privilege (*Bell* at p. 539). * * * [W]e look to substance, not to bare form, to determine whether constitutional minimums have been honored" (citation omitted) (*Bell* at p. 541). * * * The hearing required by due process must be 'meaningful' * * * and 'appropriate to the nature of the case' " (*Bell* at p. 552).

In *Berry*, New York made trainers responsible for the condition of their horses before, during, and after a race. Barchi was a trainer whose horse was found to have been drugged; Barchi's license was summarily suspended. The Supreme Court found that the lack of a pre-suspension hearing did not violate due process, *but the failure to provide a timely post-suspension hearing did.* The State:

> "* * * may impose an interim suspension pending a prompt judicial or administrative hearing that would definitely determine the issues * * *. (*Berry* at p. 64).

> * * * [T]he opportunity to be heard must be 'at a meaningful time and in a meaningful manner.' * * * Here, the provision for an administrative hearing, neither on its face nor as applied in this case, assured a prompt proceeding and prompt disposition of the outstanding issues * * * . Once the suspension has been imposed * * * a speedy resolution of the controversy became paramount. It was necessary that Barchi be assured a prompt postsuspension hearing, one that would proceed and be concluded without appreciable delay." (*Berry* at p. 66)

In the case at bar, neither a pre-suspension or post-suspension hearing on the *de facto* suspension of Greening's license was given.

(b) NO HEARING WAS PROVIDED ON STATE CONSTITUTIONAL ISSUES

The whole thrust of Greening's challenge centered on whether the use of funds raised by Supreme Court rule were in accordance with State constitutional and statutory law. Greening's challenge was based on sound legal doctrine: In *Hoover v. Ronwin*, 466 U.S. 588 (1984) this Court held that attorney regulation by a commission, which was structured identical to the one utilized in Illinois, was a state governmental function; In *Attorney Registration and Disciplinary Commission v. Harris*, 595 F.Supp. 107 (1984), the District Court held that the ARDC was not an independent functionary, but a part of the Illinois Supreme Court and the funds raised by the ARDC were funds belonging to the Court; The Illinois State Constitution declares that the Illinois General Assembly has the exclusive authority to raise revenue and fees (Ill. Const. Art. IX, Secs. 1 and 2) (Appendix H); State statutes (Ill.Rev.Stat. (1989) ch. 127, pars. 140, 170 and 171) prescribe how the Supreme Court and other State agencies are required to administer the funds they collect.

When the State Supreme Court and its agent the ARDC refused to address Greening's questions, he attempted to test his interpretation of State law through the protest of his 1989 fee.[8] When Greening did so, the Court and the ARDC invoked the automatic provisions of Rule 756 and notified the legal community that Greening was no longer permitted to practice law. Thereafter, the Court avoided the constitutional and payment issues by refusing a hearing on its summary termination of Greening's proprietary right to practice law.

Although constitutional issues were raised in the response to the Supreme Court's August 7, 1989, order for Greening to show cause why his license should not be suspended, no hearing was provided. Twenty two months later, the Supreme Court summarily dismissed its own license suspension proceedings as "moot" after sentencing Greening on the later charge of indirect criminal contempt. (Appendix B)

Greening had a right to legally challenge the State Supreme Court's use of funds raised by rule and the basis of its practices (*Adams v. Atty. Reg. Dscpl. Comm.*, 801 F.2d 968 (7th Cir. 1986); *Supreme Court of Virginia v. Consumers Union*, 100 S.Ct. 1967 (1980)) and the State is required to provide a forum for such challenges. The failure of the State Supreme Court to provide an opportunity to address these issues was State action under

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[8] Greening attempted to raise the issues in the same manner as a tax protest. However, the Court assesses this fee through its own Rule. None of the State statutes dealing with the protesting of taxes and fees were applicable since these statutes were legislatively imposed and executively enforced, both of which were subject to judicial challenge. Here we have judicially imposed revenue raising and judicially enforced collection subject to no independent judicial review.

the Fourteenth Amendment and a direct denial of due process.

(c) THE ISSUE OF PAYMENT WAS NOT ADDRESSED

Payment was an indispensable element and a major issue to the summary denial of Greening's proprietary right to practice law. The Court refused to consider payment other than to use alleged failure to pay as a sword to cut off Greening's property right in his license. Since payment was a critical factor in the Court's regulatory scheme, the Court could not, consistent with due process, eliminate it from consideration (*Bell v. Burson* at page 542).

As a minimum due process requirement, the Illinois Supreme Court should have afforded Greening an opportunity for a hearing on the legal issues he raised (*Berry v. Barchi*, 443 U.S. 55 (1979)) rather than invoking criminal contempt proceedings to punish him for exercising his right to make that challenge. When the Court declined to provide any forum to address Greening's issues and instead denied his proprietary right to practice his profession, Greening faced a choice between capitulation without a hearing or his livelihood. Not being able to forego his livelihood, Greening tendered payment, but the Court refused to accept it and its agent, the ARDC, continued to proceed as if payment were never made. This was in contravention of its own Rule 756(e) providing that "an attorney whose name has been removed from the Master Roll solely for failure to register and pay the registration fee may be reinstated as a matter of course upon registering and paying * * *".[9]

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[9] Only payment was at issue. See footnote 1.

(II) DUE PROCESS WAS NOT AFFORDED IN THE CRIMINAL CONTEMPT PROCEEDINGS

(a) NO HEARING WAS PROVIDED ON EITHER FEDERAL OR STATE CONSTITUTIONAL ISSUES

By the limitations placed on the Bone proceedings by the Supreme Court, no legal issues were considered. The Supreme Court consciously ignored any challenge to its original summary denial of Greening's proprietary right to his license and concomitantly excluded from review all of the constitutional issues and points of law which Greening sought to have reviewed. These exclusions are in direct opposition to the representations made by the Court's agents, the ARDC, to the Federal District Court that Greening would be afforded a full hearing. (see footnote 6). The closing statement of the ARDC, at the fourth Bone proceeding, is a clear expression that no constitutional issues, either Federal or State, and no issues involving payment or intent were to be considered:

> The ARDC stated: "* * * I think it is important to remember here in this proceeding that the administrator and the Court, the Supreme Court, are not the entities of the individuals that are on trial. Mr. Greening is on trial. His conduct is what this Court is directed to flush out * * * we simply ask that the Court [Bone] review the record with the proviso and find that the administrator has proven beyond a reasonable doubt * * * the factual issues." (Bone tran., 9/21/90, p. 30, l. 17-24; p. 31, l. 1-4)

After the Bone proceedings were completed, the Illinois Supreme Court neatly excluded its own consideration of state or federal constitutional issues by limiting the subject matter of the briefs. (M.R. 5916, Order of December 27, 1990) (Appendix G) This was despite the fact that Judge Bone deferred legal and constitutional issues to the Illinois Supreme Court and despite the fact that the ARDC

stated before Judge Bone "* * * Mr. Greening would have the opportunity to raise all issues of law in the Illinois Supreme Court." (Bone tran., 6/21/90, p. 12, l. 1-3). Greening specifically pointed out to the Illinois Supreme Court that the federal and state constitutional issues were not addressed because the parties were precluded from addressing them by the Supreme Court's order limiting the contents of the briefs (M.R. 5916, Brief and Argument of Respondent-Defendant, p. 2). (See also, Timing of Presentation of Federal Questions, Items (d) and (e), pages 12-13 *supra*.)

It was only after the Court found Greening guilty that it even acknowledged the existence of constitutional issues. At the sentencing hearing, the Court commented that all constitutional issues were meritless.[10] (Appendix B., p. 2) To invoke a criminal proceeding in which constitutional issues are not addressed is a direct violation of due process under the Fourteenth Amendment to the U.S. Constitution.

(b) NO HEARING WAS PROVIDED ON THE ISSUE OF PAYMENT

The charge against Greening was the unauthorized practice of law after his name had been removed from the Master Roll for failure to pay the fee. Payment is, therefore, an affirmative defense. Judge Bone determined that payment was an issue outside his authority to decide—"* * * the Supreme Court can decide the effect [of payment] * * *."

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[10] The Court made no distinction between constitutional issues going to the use of funds raised by court rule (the issues first raised by Greening) and the constitutional issues and legal defenses ignored during the bifurcated Bone-Justices proceedings.

(Bone tran., 9/7/90, p. 66-68) and declined to allow any testimony on payment on the grounds that if payment were made "* * * the Supreme Court can decide the effect." (Bone tran., 9/9/90, p. 19, l. 6-10). Bone ruled that payment involved a conclusion of fact and law. Therefore, Judge Bone left this finding to the Court and refused to hear evidence on this factual question. The issue of payment was excluded from the briefing before the Justices. (Appendix G) A finding on payment did not occur either before Judge Bone or the Justices. Since payment was an indispensable element in the criminal trial, its exclusion violated due process under the Fourteenth Amendment to the U.S. Constitution.

(c) NO HEARING WAS PROVIDED ON THE ISSUE OF INTENT

The law on contempt is clear. To constitute criminal contempt, the conduct must be directed against the dignity and authority of the Court or a judge acting judicially (*People v. Gholson*, 412 Ill. 294 (1952)). The state must establish beyond a reasonable doubt that plaintiff willfully intended to undermine the dignity and authority of the Court. The defendant's conduct must be willful and the state must prove willfulness beyond a reasonable doubt (*People v. Witherspoon*, 52 Ill. App. 3d 151 (1957)). Criminal contempt consists of a contemptuous act and a wrongful state of mind (*In Re Farquhar*, 160 U.S. App. D.C. 295, 298 (1973)) and each of these elements must be proven beyond a reasonable doubt (*Parker v. United States*, 373 A.2d 906 (1977)). Consequently, the requisite mental state for a conviction of indirect criminal contempt is to show contumacious intent. The issue of intent was never addressed or proved. Judge Bone, as trier of fact, specifically stated that he would not address intent; that intent was

for the Supreme Court to decide. (Bone tran., 9/7/90, p. 68, l. 16-23). The Illinois Supreme Court never addressed intent; it only addressed specific conduct which it adopted from Judge Bone's report.

To separate the finding of intent between Judge Bone and the Justices is itself a fundamental violation of due process. (*Morgan v. United States*, 298 U.S. 468 (1936)) It is a basic principle of American criminal jurisprudence that the officer who hears and sees the evidence, and observes and "feels" the conduct, demeanor and testimony of the witnesses must draw the final conclusion on intent. Intent is a credibility dependent determination requiring a live exchange. It can not be determined by other Judges through the sterile and isolated reading of a cold transcript after one Judge tells "the bare story without making conclusions" (Bone tran., 9/7/90, p. 69, l. 13-24; p. 70, l. 1-10).

The issue in this petition is whether the Illinois Supreme Court has inherent authority to ignore its own rules and ignore State statutes and constitutional provisions in order to take punitive action against a licensee who raises issues it refuses to address. There was no criminal conduct, only summary punitive action by the Court. All Judge Bone found were facts of specific conduct. Judge Bone did not draw conclusions from these isolated facts to find the ultimate facts which constitute the elements of a crime. Judge Bone did not even find that Greening practiced law, much less that he had engaged in the unauthorized practice of law. Both the criminal act and the criminal intent must be proven beyond a reasonable doubt and neither were. Judge Bone in his report stated: "[t]he facts with respect to whether Respondent engaged in the unauthorized practice of law * * * were found * * * from [sources omitted]. They have been proven beyond a reasonable doubt * * *." (Appendix F). Judge Bone's standard of

"beyond a reasonable doubt" went to the existence of specific base conduct, not to criminal conduct or criminal intent. Judge Bone stated he could not " * * * make determination * * * of whether or not [Greening] did things in a knowing * * * manner * * *." To do so would invade the province of the Supreme Court. Judge Bone drew no conclusions as to whether any conduct was criminal. The Illinois Supreme Court took Judge Bone's perniciously ambiguous "conclusion" to find beyond a reasonable doubt that Greening engaged in the unauthorized practice of law with the intent to be contumacious of the Court. By the rewriting of a sentence, the Illinois Supreme Court completed a criminal trial without ever finding the elements of the crime. Judge Bone heard the evidence, but made no finding to support conviction; the Justices made the findings of criminal action, but heard no evidence. Consequently, no hearing was afforded at any level of the bifurcated proceedings on the essential element of intent.

Intent could not be determined in isolation from the issue of payment, but Judge Bone excluded testimony bearing on intent and payment. Not only did Greening pay, a clear negation of contemptuous intent, but Judge Mills of the Federal District Court, after making inquires to the clerk of the Illinois Supreme Court, specifically found in his order that Greening *was licensed to practice law in Illinois*. (See Footnote 4) The fundamental confusion created by the Illinois Supreme Court as to Greening's right to practice law during his challenge of the Illinois Supreme Court's use of funds raised by Court rules destroys criminal intent and creates reasonable doubt as a matter of law.

The failure to afford a hearing on the requisite intent in a criminal case is a fundamental violation of due process under the Fourteenth Amendment of the U.S. Constitution.

(d) NO TEST WAS PERMITTED ON THE SUFFICIENCY OF THE PROSECUTION'S EVIDENCE

At the conclusion of the ARDC's case in chief, Greening moved for a determination that the ARDC's case was insufficient to support the charge of indirect criminal contempt. It is an absolute requirement of due process that no person shall be forced to defend himself in a criminal matter unless and until the State has presented a *prima facie* case on the essential elements of the offense charged. The Defendant has a right to test that sufficiency before being put to the burden of defense. This point was conceded by Judge Bone who admitted that if he were free to do so, he would have ruled in the Defendant's favor and acquitted Greening. (Bone tran., 9/7/90, p. 12, l. 19-24; p. 13, l. 1-2) Judge Bone declined to acquit Greening because he did not have the authority to do so under the Supreme Court's order and forced Greening to go forward. The failure to allow the trier of fact, Judge Bone, to address sufficiency of the evidence was a direct violation of due process under the Fourteenth Amendment to the U.S. Constitution.

(e) THE RIGHT TO CONFRONTATION WAS DENIED

Through motions at the Bone proceedings, Greening challenged the propriety of the ARDC to act as criminal investigator, prosecutor, and counsel to the Supreme Court all at the same time and to act as prosecutor in contravention of the constitutional authority of the Illinois Attorney General. To all these challenges, the ARDC responded that the Supreme Court " * * * has an original jurisdiction and inherent authority to proceed. The Court can delegate certain functions to the Court, as they have in this case, and to the administrator [of the ARDC]. We

believe the administrator is not a party. *We are not a prosecutor.* But, as custom and practice will show, the administrator performs the function of relator to the Court." (Bone tran., 6/21/90, p. 13, l. 15-23) "The Court has appointed the administrator as relator in this matter, not a party." (Bone tran., 6/21/90, p. 17, l. 13-17) Judge Bone determined "I am going to find that pursuant to the direction of the Supreme Court that I have no authority to determine who the parties are." (Bone tran., 6/21/90, p. 14, l. 22-24) "The Court agrees with [the ARDC]. Original jurisdiction is with the Supreme Court. ARDC is a creation of the Supreme Court. It should be their determination whether or not counsel has standing to appear before the Court." (Bone tran., 6/21/90, p. 17, l. 18-22) When Greening attempted to subpoena the ARDC investigator and her investigative files, Judge Bone quashed the subpoena *because the investigator was a prosecutor* and the court in a regular criminal case would not allow the defense to subpoena the States Attorney (Bone tran., 9/21/91, p. 10, l. 19-21; p. 21, l. 17-22).

The commingling of roles by persons who are employees of the Supreme Court (*Atty. Reg. and Discpl. Comm. v. Harris*, 595 F.Supp. 107 (1984)) denied Greening his right of confrontation and the right to cross-examine his accuser on essential factual issues.[11] The denial of this right was a direct violation of the due process clause of the Fourteenth Amendment of the U.S. Constitution.

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[11] The verified report of the investigation provided the basis for the criminal contempt petition. If the Attorney General were acting as the prosecutor, as the constitutional law of Illinois suggests, then the ARDC would have been subject to subpoena just as any "police officer" or complaining witness.

(f) NO APPEAL WAS PROVIDED

The proceedings to which Greening was subject provide no manner of appeal or independent review. The Supreme Court takes the position that it has the exclusive and inherent authority to regulate the practice of law and, therefore, is the court of original jurisdiction and last resort.[12] To establish a criminal proceeding with the "command influence" exhibited under the process adopted by the Illinois Supreme Court in Greening's situation and to provide no appeal or independent review violates all notions of fundamental fairness. Every criminal defendant should be afforded the right to one judicial review. Here we have Court created, enforced and adjudicated criminal conduct, the enforcement and adjudication of which is subject to no rules. All criminal defendants in Illinois have the right to appeal.[13] Once the State has established an appeal process, it must afford all similarly situated defendants equal and reasonable access to that process. Its action to preclude selected defendants of the appeal opportunity is a

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[12] The Illinois Constitution specifies the only areas of original jurisdiction for the Supreme Court (Ill. Const., Art. VI, Sec. 4(a)). This specification does not include the subject matter of this suit. In addition, the concept of Masters and Magistrates was abolished in Illinois in the judicial reform of 1964 and this abolition was carried through into the new constitution in 1970. Since Judge Bone, by his own finding, was not sitting as a circuit judge, he was acting in a judicial capacity constitutionally abolished in Illinois law.

[13] Under the Illinois Constitution, the circuit courts have original jurisdiction over all justiciable issues, except where the Supreme Court has original and exclusive jurisdiction relating to redistricting and the ability of the Governor to serve or resume office (Ill. Const., Art. VI, Sec. 9) and appeals from final judgments of a circuit are a matter of right to the appellate court except where appealable directly to the supreme court, and except in criminal cases from a judgment of acquittal. (Ill. Const., Art. VI, Sec. 6)

denial of both equal protection and due process under the Fourteenth Amendment to the U.S. Constitution.

The failure to provide for any appellate process in a criminal proceedings is a direct violation of due process under the Fourteenth Amendment of the U.S. Constitution.[14]

(g) AN IMPARTIAL TRIBUNAL WAS NOT PROVIDED

The U.S. Constitution requires that judicial proceedings must be fundamentally fair and fundamental fairness requires that there be an impartial and unbiased decision maker. The process followed by the Illinois Supreme Court denied an impartial tribunal. The foundation for the Court's position is that only it has the exclusive and inherent authority to regulate the practice of law, a proposition not in dispute.

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[14] This issue has never been directly decided. The issue has been dicta in cases involving other issues. As Justice Brennan stated in *Jones v. Barnes*, 463 U.S. 745 (1983): "If the question [right to appeal] were to come before us in a proper case, I have little doubt that the passage of nearly 30 years since *Griffin* and some 90 years since *McKane v. Durston*, 153 U.S. 684 (1894), upon which Justice Frankfurter relied, would lead us to reassess the significance of the factors upon which Justice Frankfurter based his conclusion. I also have little doubt that we would decide that a State must afford at least some opportunity for review of convictions * * *. There are few, if any, situations in our system of justice in which a single judge is given unreviewable discretion over matters concerning a person's liberty or property, and the reversal rate of criminal convictions on mandatory appeals in the state courts, while not overwhelming, is certainly high enough to suggest that depriving defendants of their right to appeal would expose them to an unacceptable risk of erroneous conviction. Of course, a case presenting this question is unlikely to arise, for the very reason that a right of appeal is now universal for all significant criminal convictions."

The Illinois Supreme Court itself controlled this prosecution, not for the administration of justice, but to protect its own self interest—the maintenance of a self-controlled funding scheme to protect its conscribed inherent power. There was no appeal to any independent authority and there were no rules. The proceedings used to deprive Greening of his license were not disciplinary proceedings based upon misconduct. A separate set of rules apply in disciplinary cases which provide for notice, hearing and review and thus provide some semblance of due process. (S.Ct. Rule 753, Ill.Rev.Stat. (1989) ch. 110A, par. 753) Greening was treated uniquely and denied any substantive or procedural rights, not because of misconduct, but because he challenged the system. The summary and *de facto* suspension of his license which denied his proprietary right to practice law was followed by this selective and vindictive prosecution. This was not envisioned by our founding fathers as "inherent in our concept of ordered liberties". The fact that authority may be derived from inherent (rather than constitutional or statutory) power does not sanction these abuses and does not waive minimum federal due process and equal protection rights.

The Illinois Supreme Court has created a separate sovereign who enjoys total immunity and discretion and is accountable to no one, including the constitution. It has created a separate kingdom in which the judge is king and the king can do no wrong. The process, as implemented and operated by the Illinois Supreme Court, has no place in American jurisprudence and is the antithesis of due process. As Madison stated: "The accumulation of all powers, legislative, executive, and judiciary in the same hands, whether of one, a few, or many, and whether hereditary,

self-appointed, or elective, may justly be pronounced the very definition of tyranny."[15]

CONCLUSION

For the reasons herein stated the writ of certiorari to review the two final orders of the Illinois Supreme Court entered May 29, 1991 and June 25, 1991, respectively, should be issued.

Respectfully submitted,

LEGRAND L. MALANY
Counsel of Record
600 South Rosehill
Springfield, Illinois 62704
(217) 525-1132
Attorney for Petitioner

[15] The Federalist, No. XLVII, Madison, N.Y. Packet, February 1, 1788.

APPENDICES

INDEX TO APPENDICES

APPENDIX A

[Filed May 29, 1991]

IN THE SUPREME COURT OF ILLINOIS

M.R. 5916

In re:	)	
	)	Atty. Reg.
Alfred H. Greening, Jr.,	)	& Disc. Comm.
	)	89 CH 425
Respondent	)	
	)	

ORDER

This cause having come for consideration on this Court's rule to show cause, the factual findings made by the Circuit Court of the Seventh Judicial Circuit on the issues formed by the verified supplemental report filed by the Administrator of the Attorney Registration and Disciplinary Commission and the answer to the rule to show cause filed by respondent Alfred H. Greening, Jr., and on the briefs filed by the parties, and this Court being fully advised in the premises;

It is the determination of this Court that it has been established beyond a reasonable doubt that respondent engaged in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys on March 1, 1989. The rule to show cause that issued to respondent on March 26, 1990, is enforced, and respondent is held in indirect criminal contempt of Court for engaging in the unauthorized practice of law. Respondent and the representative of the Administrator are directed to appear for sentencing on this contempt on Tuesday, June

25, 1991, at 3:00 P.M. in Springfield. Arguments will be limited to ten minutes for respondent, ten minutes for the Administrator, and five minutes for respondent's rebuttal.

Miller, C.J. and Moran, J. took no part.

APPENDIX B

[Filed June 25, 1991]

IN THE SUPREME COURT OF ILLINOIS

M.R. 5916

In re:	)	
	)	Atty. Reg.
Alfred H. Greening, Jr.,	)	& Disc. Comm.
	)	89 CH 425
Respondent	)	
	)	

ORDER

Respondent Alfred H. Greening, Jr. having been held in indirect criminal contempt of Court on May 29, 1991, for engaging in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys on March 1, 1989, respondent and the representative of the Administrator having appeared for sentencing on this contempt on June 25, 1991, and the Court being fully advised in the premises;

The Court reiterates its finding that it has been established beyond a reasonable doubt that respondent engaged in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys; specifically, respondent performed the following acts after March 1, 1989, in the Halbert Estate case (Sangamon County No. 88 P 97) which constitute the practice of law:

1. Advised the estate administrator of the proper procedures for closing an estate under the Probate Act of 1975 (Ill. Rev. Stat. 1989, ch. 110½, par. 1-1 *et seq.*);

2. Prepared a final accounting presumably as required by Section 24-1 of the Probate Act of 1975 (Ill. Rev. Stat. 1989, ch. 110½, par. 24-1); and

3. After obtaining the signature of the estate administrator on the final accounting, presented it to Judge Friedman.

The Court also finds that respondent's argument that removing his name from the Master Roll of Attorneys pursuant to the provisions of Supreme Court Rule 756 constitutes a violation of his due process rights because he is in compliance with "AN ACT to revise the law in relation to attorneys and counselors" (Ill. Rev. Stat. 1989, ch. 13, par. 1 *et seq.*) and because the procedures prescribed by the Act were not followed here is an argument without merit. It is well established that it is exclusively within the prerogative of the Supreme Court to determine who shall be permitted to practice law in Illinois. While the General Assembly may adopt acts which relate to the practice of law "[s]uch statutes are merely in aid of, and do not supersede or detract from, the power of the judicial department to control the practice of law." *People ex rel. Chicago Bar Association v. Goodman* (1937), 366 Ill. 346, 349.

The Court also has considered respondent's other constitutional challenges made throughout the course of these proceedings, and we find them to be without merit.

THEREFORE respondent is sentenced as follows:

Respondent is fined in the amount of two hundred dollars ($200), to be paid to the Clerk of this Court on or before July 25, 1991.

The rule to show cause that issued to respondent on August 7, 1989, is discharged, having been superceded by the rule to show cause enforced on May 29, 1991.

Miller, C.J., and Moran, J. took no part.

APPENDIX C

[Filed October 26, 1989]

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS–
SPRINGFIELD DIVISION

IN RE: DONALD D. KURTZ and BLANCE H. KURTZ, Debtors.	)	
DONALD KURTZ, et al., Plaintiffs,	)	
v.	)	No. 86-3235
MICHAEL J. SCULLY AND PETER D. SCULLY, Trustee under the Will of Thomas A. Scully, Deceased, et al., Defendants.	)	

ORDER

RICHARD MILLS, District Judge:

This Court has received a letter dated October 24, 1989, from Attorney Alfred H. Greening, Jr., who is attorney of record for the bankrupt estate in this case. The letter refers to certain documents which relate to a pending action before the Disciplinary Committee of the Supreme

Court of Illinois involving Attorney Greening. Attorney Greening left copies of these documents with the Court on October 19, 1989. Neither the documents themselves nor Attorney Greening's letter of October 24 indicate that copies were served on opposing counsel.

The Supreme Court of Illinois has issued a rule to show cause against Attorney Greening who has refused to pay his registration fee. On October 25, 1989, this Court contacted the Clerk of the Supreme Court of Illinois to determine the current status of Attorney Greening's cases. At present, Attorney Greening is entitled to practice law in Illinois and thus, pursuant to Local Rule 1, he may also practice before this Court. If Attorney Greening is suspended by the Supreme Court of Illinois, he is directed to immediately notify this Court which will then take whatever steps may be appropriate.

We remind Attorney Greening that it is highly inappropriate for counsel to engage in *ex parte* communications with the Court. *Cochran v. Celotex Corp.*, 125 F.D.R. 472 (C.D. Ill. 1989). Attorney Greening is therefore ordered that all documents or motions which are relevant to this action should in the future be filed with the Clerk of Court. The Court will also forward copies of the documents left with the Court and a copy of Attorney Greening's letter to counsel of record for all parties.

Ergo, Attorney Greening is ordered to stop all *ex parte* communications with this Court. Any documents which he wishes to file in the pending action should be filed with the Clerk of Court. Copies of the letter and documents sent to this Court will be forwarded to counsel of record for all parties. If Attorney Greening is suspended by the supreme court, he is ordered to notify this Court of that fact within 2 days of his suspension.

ENTER: 25 October, 1989.

FOR THE COURT:

/s/ RICHARD MILLS
RICHARD MILLS
United States District Judge

APPENDIX D

[*Letterhead Of*]

STATE OF ILLINOIS
SUPREME COURT CLERK
SUPREME COURT BUILDING
SPRINGFIELD 62706

JULEANN HORNYAK
Clerk of the Court
(217) 782-2035

FIRST DISTRICT OFFICE
Room 30-129
Richard J. Daley Center
Chicago 60602
(312) 792-1332

September 27, 1989

Mr. Alfred H. Greening, Jr.
Attorney at Law
101 West Main Street
P.O. Box 5
Williamsville, IL 62693

Dear Mr. Greening:

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

M.R. 5916—In re: Alfred H. Greening, Jr. Disciplinary Commission.

The clerk of this Court is directed to return to respondent Alfred H. Greening, Jr. the check in the amount of $230.00 tendered with respondent's answer to the rule to show cause. The rule to show cause that issued to respondent on August 7, 1989, pursuant to Supreme Court Rule 756 is continued to and in-

cluding October 4, 1989, to give respondent the opportunity to make payment of the registration fee and penalty to the Attorney Registration and Disciplinary Commission. Miller, J., took no part.

cc: LeGrand L. Malany
Deborah Kennedy
Kenneth Jablonski, Clerk of Commission

APPENDIX E

[Filed May 30, 1990]

M.R. 5916

IN THE
SUPREME COURT OF ILLINOIS

In re:	)	
	)	Atty. Reg.
Alfred H. Greening, Jr.,	)	& Disc. Comm.
	)	89 CH 425
Respondent	)	
	)	

ORDER

The Administrator of the Attorney Registration and Disciplinary Commission having alleged in a verified supplemental report filed with the Court on February 13, 1990, that respondent Alfred H. Greening, Jr. has engaged in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys on March 1, 1989, pursuant to Supreme Court Rule 756 for failing to register and pay the registration fee for the year 1989, and respondent having answered the rule to show cause that issued to him on March 26, 1990, directing him to show cause why he should not be held in indirect criminal contempt of Court for engaging in the unauthorized practice of law;

It is ordered that the rule to show cause is continued, and that respondent and the representative of the Attorney Registration and Disciplinary Commission appear before the Honorable J. David Bone, Judge of the Seventh Judicial Circuit, in Room D, Third Floor, of the Sangamon

County Courthouse at 9:30 A.M. on Thursday, June 21, 1990, for the purpose of an evidentiary hearing in which only findings of fact shall be made on the issues formed by the Administrator's verified report and the respondent's answer to the rule to show cause. The transcript of the proceedings before Judge Bone shall be filed with the Clerk of this Court.

Miller, J. took no part.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court this 30th day of May 1990.

/s/ JULEANN HORYNAK Clerk,
Supreme Court of the State of Illinois.

APPENDIX F

[Filed October 4, 1990]

IN THE
SUPREME COURT OF ILLINOIS

IN THE MATTER OF:	)	Supreme Court
	)	No. M.R. 5916
ALFRED H. GREENING, JR.,	)	
	)	Administrator's
Attorney-Respondent.	)	No. 89-CH-425
	)	

REPORT OF HEARINGS CONDUCTED PURSUANT TO ORDER ENTERED MAY 30, 1990

J. David Bone, Judge of the Seventh Judicial Circuit, designated by order of the Supreme Court of Illinois entered on May 30, 1990, to hear evidence and make findings of fact on the issues formed by the Administrator's verified reports and the Respondent's answer to the rule to show cause, reports as follows:

1. The pleadings consist of the Administrator's verified supplemental report filed with the Supreme Court on February 13, 1990, and the Respondent's answer to the rule to show cause filed April 30, 1990. They form the basis on which evidence was offered and received.

2. Numerous motions were presented to this Court by Respondent, both before and during trial. Those within the province of this Court were ruled upon (misdemeanor discovery, bill of particulars, lists of witnesses, etc.). Most were found to be otherwise and were deferred to the Supreme Court. Rulings may be found in the record of proceedings or in docket orders filed with the Clerk of the Supreme Court.

3. As a result of said rulings and deferrals, issues raised by Paragraphs Number 1 and Number 8b through 11 of Respondent's answer to the rule to show cause were disregarded (jurisdiction, standing, authority, due process, and equal protection). Issues remaining were whether Respondent both registered with the Attorney Registration and Disciplinary Commission (ARDC) and paid the appropriate fee, and whether he engaged in the unauthorized practice of law after his name was removed from the master roll of attorneys authorized to practice law. The Administrator agreed to limit his evidence of Respondent's conduct to matters set forth in a written specification of factual allegations.

4. Evidentiary hearings were conducted at the Sangamon County Courthouse on August 6, 1990, and on September 7, 1990. Final argument was heard at the Morgan County Courthouse on September 21, 1990. The bifurcation was the result of Respondent's need to take the videotaped deposition of a witness in Cook County who was unable to travel. The subpoena for said deposition was later quashed.

5. The record consists of testimony taken and transcribed and documents offered and received. The reporter's record of proceedings has been filed with the Clerk of the Supreme Court. A stipulation of facts and admissibility of documents received in evidence August 6, 1990, and a document marked Respondent's Number 1, received in evidence September 7, 1990, are submitted with this report.

6. The facts with respect to whether Respondent both registered with the Attorney Registration and Disciplinary Commission and paid the appropriate fee may be found in the attached stipulation, with the exception of Paragraphs 2 through 5, 23, and 24. They are clearly set forth

in chronological order, require no reiteration, and have been proven beyond a reasonable doubt.

7. The facts with respect to whether Respondent engaged in the unauthorized practice of law after his name was removed from the master roll of attorneys authorized to practice law and informed of said removal on or about March 22, 1989, were found from said stipulation in Paragraphs 2 through 5, 23, and 24, and from the testimony presented. They have been proven beyond a reasonable doubt and are set forth as follows:

Respondent was attorney of record for the administrator in case styled *Estate of Halbert*, Number 88-P-97, Sangamon County, Illinois, from the date of filing, February 19, 1988, through its closing on October 27, 1989. This estate was assigned to Judge Friedman.

On or about August 9, 1989, Respondent inquired of Judge Cavanagh, Chief Judge of the Seventh Judicial Circuit, whether he would be permitted to practice law in his courtroom. He was told that he would not be allowed to do so before Judge Cavanagh in Sangamon County, as his name had been removed from the master roll. He did not speak as Chief Judge and intended the ruling to pertain only to cases Respondent had before him personally.

Upon the administrator's request to close the estate, Respondent informed her he may not be allowed to do so but he would find out. She considered it to be a "technical" problem. He advised her on the procedure for completing the estate, he completed the final report for her approval and signature, and received her check of $39 for closing costs.

On or about October 19, 1989, Respondent appeared in Judge Friedman's chambers with a file relating to his

ARDC dispute. Judge Friedman declined to look at Respondent's ARDC file, as he had followed the case in the Chicago Daily Law Bulletin. He did not recall their conversation.

On October 20, 1989, Respondent appeared at the office of the Clerk of the Circuit Court of Sangamon County, Probate Division, and filed with the clerk said final report in said case, tendered said check, and additionally filed an estate closing letter from the Internal Revenue Service and a certificate of discharge and determination of tax issued by the Attorney General.

On the same day (October 20), Respondent reappeared before Judge Friedman. Judge Friedman's docket entry in said Case Number 88-P-97 states: "On October 20, 1989, Alfred H. Greening appeared to obtain an approval of final accounting in this estate. The Court informed him he was not allowed to practice before it until such time as he got his matter with the Attorney Registration and Disciplinary Commission straightened out."

Judge Friedman testified that when Respondent appeared on October 20, 1989, he first inquired if Judge Friedman would allow him to practice, explaining that "he had paid and registered." Respondent was told he had paid his fee "to the wrong people," that he had paid the court and should have paid it to the ARDC. Respondent was told to send someone else to close the estate.

Judge Friedman's court reporter corroborates that Respondent came to Judge Friedman's chambers on two consecutive days on or about the 18th, 19th, or 20th of October, 1989.

Respondent then reported to the administrator that he was unable to close the estate. On his recommendation

and with the administrator's approval, Attorney Beth Wilke entered an appearance in said estate and obtained court approval of the final account and a discharge of the administrator on October 27, 1989.

Attorney Howard Blaylock testified that Sangamon County has no local rules of procedure for probate cases. He said that probate procedures are informal and conducted in chambers unless there is a controversy. However, he stated that local practice (and Supreme Court rule) requires a formal motion for leave to withdraw and leave of court before an attorney may withdraw from a probate case.

Respondent did not testify.

Respectfully submitted,

/s/ J. DAVID BONE
J. David Bone
Circuit Judge

JDB/mas

APPENDIX G

[Filed December 27, 1990]

M.R. 5916

IN THE
SUPREME COURT OF ILLINOIS

In re:	)	
	)	Atty. Reg.
Alfred H. Greening, Jr.,	)	& Disc. Comm.
	)	89 CH 425
Respondent	)	
	)	

ORDER

The motion by respondent Alfred H. Greening, Jr. to vacate the briefing schedule of December 5, 1990, and to set a new schedule is allowed. The brief of the Administrator of the Attorney Registration and Disciplinary Commission on the issue of whether respondent engaged in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys on March 1, 1989, is due on or before January 31, 1991, and the brief of respondent is due on or before March 7, 1991.

Moran, C.J. and Miller, J. took no part.

APPENDIX H

Excerpts from the 1970 Illinois Constitution

ARTICLE II

THE POWERS OF THE STATE

Section
1. Separation of Powers.
2. Powers of Government.

§ 1. Separation of Powers

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

* * *

ARTICLE IX

REVENUE

§ 1. State Revenue Power

The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away.

§ 2. Non-Property Taxes—Classification, Exemptions, Deductions, Allowances and Credits

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

APPENDIX I

Ill.Rev.Stat. 1989, ch. 110A, par. 756

RULE 756. Registration and Fees

(a) **Annual Registration Required.** Except as hereinafter provided, every attorney admitted to practice law in this State shall register and pay an annual registration fee to the Commission on or before the first day of January. Until further order of the court, the following schedule shall apply:

(1) No registration fee is required of an attorney admitted to the bar less than one year before the first day of January for which the registration fee is due; an attorney admitted to the bar for more than one year but less than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of $70; an attorney admitted to the bar for more than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of $140.

(2) An attorney in the Armed Forces of the United States shall be exempt from paying a registration fee until the first day of January following discharge.

(3) An attorney who has reached the age of 75 years shall be excused from the further payment of registration fees.

(4) An attorney licensed to practice in this State for more than 1 year before the first day of January for which the registration fee is due, but who neither resides nor practices nor is employed in this State, shall pay an annual registration fee of $35.

(5) For purposes of this rule, the time shall be computed from the date of an attorney's initial admission to practice in any jurisdiction in the United States.

(6) Upon written application and for good cause shown, the Administrator may excuse the payment of any

registration fee in any case in which payment thereof will cause undue hardship to the attorney.

(b) **The Master Roll.** The Administrator shall prepare a master roll of attorneys consisting of the names of attorneys who have registered and have paid or are exempt from paying the registration fee. The Administrator shall maintain the master roll in a current status. At all times a copy of the master roll shall be on file in the office of the clerk of the court. An attorney who is not listed on the master roll is not entitled to practice law or to hold himself out as authorized to practice law in this State.

(c) **Notice of Registration.** On or before the first day of November of each year the Administrator shall mail to each attorney on the master roll a notice that annual registration is required on or before the first day of January of the following year. It is the responsibility of each attorney on the master roll to notify the Administrator of any change of address. Failure to receive the notice from the Administrator shall not constitute an excuse for failure to register.

(d) **Removal from the Master Roll.** On February 1 of each year the Administrator shall remove from the master roll the name of any person who has not registered for that year. Any person whose name is not on the master roll and who practices law or who holds himself out as being authorized to practice law in this State is engaged in the unauthorized practice of law and may also be held in contempt of the court.

(e) **Reinstatement to the Master Roll.** An attorney whose name has been removed from the master roll solely for failure to register and pay the registration fee may be reinstated as a matter of course upon registering and paying the registration fee prescribed for the period of his suspension, plus the sum of $10 per month for each month that such registration fee is delinquent. (Amended, effective December 1, 1988.)